Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA, EX REL.
Charles Ronald., Gray, QUI TAM,

Petitioner,

v.

Ted Stewart, Richard Langway, John Dougherty, Horace Ward, Clarence Cooper, Lori Beranek, Nina Hunt, Dan Craven, Joe Barton, Thomas Thrash and Frank Eldredge.

Respondents.

On Petition For A Writ of Certiorari To The
United States Court of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Charles Ronald., Gray In Pro Per
897 Edgewood Ave. N. E.
Atlanta, Georgia [30307]
404 688 7352

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SUPREME COURT, U.S.

QUESTION PRESENTED

WHETHER COURT'S DETERMINATION THAT GOVERNMENT OFFICIALS MERITED ABSOLUTE IMMUNITY FOR ONGOING SILENCE TO ISSUE OF JURISDICTION WAS IN ERROR, SINCE ACT WAS REFUSAL TO PERFORM NON DISCRETIONARY, ADMINISTRATIVE DUTY.

PARTIES TO ACTION BELOW

The parties to this proceeding are petitioner, The United States ex rel Charles Ronald., Gray, in his proper person, sui juris, and respondents Internal Revenue Officer Ted Stewart; United States Attorney for the Northern District of Georgia, Richard Langway; retired United States Magistrate Judge John Dougherty; United States District Court Judge Horace Ward; United States District Court Judge Clarence Cooper; United States Attorney Lori Beranek; United States Attorney Nina Hunt; United States Probation Officer Dan Craven; United States Probation Officer Supervisor Joe Barton; United States District Court Judge Thomas Thrash; and Georgia Court of Appeals Judge Frank Eldredge.

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(6th Ed. 1986)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The United States of America ex rel Charles Ronald., Gray qui tam, respectfully petitions for a writ of certiorari to review the judgment of the United States of Court Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinions of the court of appeals (App. 16a, 19a *infra*) are unreported. The opinions of the district court (App. 1a, 4a, *infra*) are unreported.

JURISDICTION

The court of appeals entered its judgment (App. 16a, *infra*) on August 03, 2000. A petition for rehearing and suggestion for rehearing *en banc* was filed on September 15, 2000, and was denied by the court of appeals (App. 19a, *infra*) by order dated November 06, 2000. The jurisdiction of this court is invoked under 28 U. S. C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

The United States District Court, Northern District of Georgia granted United States Motion to Dismiss, acknowledging that refusing to address the issue of jurisdiction *failed to state a claim.* (App.`4a-10a, Order of Judge Willis Hunt, Judge United States District Court for the Northern District of Georgia) and Defendant Judges were absolutely immune from suit.

Petitioner Gray appealed to the Eleventh Circuit court of appeals in January, 2000 and argued inter alia that the district court had erred in its dismissal of Appellant's Complaint for failure to state a claim and that the Court had erred in ruling that judges were due absolute immunity for refusal to perform non discretionary administrative acts. Eleventh Circuit in a per curiam opinion on August 03, 2000 opined, "Because the challenged conduct of the district court judges and magistrate judge sued in this action were judicial in nature and within their jurisdiction to act, the district court properly concluded that these defendants were entitled to absolute immunity from suit." (App. 16a)

On September 15, 2000, Petitioner Gray filed a petition for rehearing or suggestion for rehearing en banc suggesting that the following issue merited en banc consideration:

> "APPEAL COURT ERRED IN ITS AFFIRMATION OF DISTRICT COURT'S DECISION THAT JUDGES WERE ENTITLED TO ABSOLUTE IMMUNITY FOR REFUSING TO PERFORM NON DISCRETIONARY ADMINISTRATIVE ACTS, 'PERPETRATING A CODE OF SILENCE,' A TORT OF OUTRAGE, BY

ERRATA

This page was deleted in error, and replaced out of sequence.

2

Defendants are involved in an ongoing tort of outrage, "code of silence," refusing to address the issue of jurisdiction in violation of Plaintiff Gray's Constitutional due process rights specified at the Fifth and Sixth Amendment and in violation of Plaintiff's First Amendment Right to grieve.

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This case and controversy , although having a long and tortious history [1] , is before this Honorable Court on a simple issue.

In 1998 Petitioner filed a civil rights complaint against various government employees alleging inter alia that the government employees, in intentional conspiracy, had consistently refused to address the issue of jurisdiction as required by law and were committing an ongoing tort, characterized by a code of silence, against the Petitioner in violation of his constitutional rights at I, V, VI. (**Ku Klux Complaint**).

---

[1] Petitioner filed a Petition for Common Law Writ of Certiorari in the Nature of a Criminal Complaint in 1996 (The People of the state of Georgia, Ex Rel Charles Ronald., Gray, v. The Eleventh Circuit Court of Appeals, United States District Court for the Northern District of Georgia, de facto United States of America, as corporator, No. 96-0489. Supreme Court, without comment, denied certiorari.

REFUSING TO ADDRESS THE ISSUE OF JURISDICTION AS REQUIRED BY LAW IN VIOLATION OF THE PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS TO DUE PROCESS AND DONE IN RETALIATION."

On November 06, 2000, the Eleventh Circuit Court of Appeals in a PER CURIAM opinion denied Petitioner's rehearing en banc. [App. 19a]

REASONS FOR GRANTING THE PETITION

The concept of judicial immunity is not clearly defined. In *Mireles v. Waco*, 116 L. Ed. 2d 9, the Supreme Court of the United States overturned the below court's refusal to grant immunity to Judge Mireles. Judge Mireles had been sued by Public Defender Waco alleging that "(1) after the public defender failed to appear for an initial call of the judge's morning calendar, the judge ordered the police officers to seize the public defender forcibly and with excessive force and bring him into the judge's courtroom; (2) the officers by means of unreasonable force and violence removed the public defender from another courtroom and brought him into the judge's courtroom; and (3) the judge knowingly approved and ratified each of the officers acts. The judge moved to dismiss for failure to state a claim. District Court granted the motion to dismiss and on appeal the court of appeals reversed the district court's opinion stating that Judge Mireles' behavior was not a judicial act. Judge Mireles appealed to the Supreme Court. The Supreme Court overturned the decision of the court of appeals, thus granting Judge Mireles immunity for his actions. Id.

The Supreme Court in determining that Judge Mireles' behavior was a judicial act stated *inter alia:*

> *Mireles, supra* at page 15: "[t]he relevant inquiry is the "nature" and "function" of the act itself." [I]n other words, we look to the particular act's relation to a general function normally performed by a judge, in this case the function of directing police officers to bring counsel in a pending case before the court. Nor does the fact that Judge Mireles' order was carried out by police officers somehow transform his action from "judicial" to "executive " in character. As Forrester instructs, it is "the nature of the function performed, not the identity of the actor who performed it, that inform [s] out immunity analysis.

Justice Scalia with Justice Kennedy joined in dissenting opinion in *Mireles, supra,* and opined:

> "A Summary reversal . . . is a rare and exceptional disposition, 'usually reserved by this Court for situations in which the law is well settled and stable, the acts are not in dispute, and the decision below is clearly in error.'" R. Stern, E. Gressman, & S. Shapiro Supreme Court Practice 281 (6th ed 1986)(quoting *Schweiker v. Hansen*, 450 US 785, 791, 67 L. Ed. 2d 685, 101 S. Ct. 1468 (1981)(Marshall, J., dissenting)). As Justice Stevens' dissent amply demonstrates, the decision here reversed is, at a minimum, not clearly in error."

Justice Stevens, in his dissenting opinion, stated that court had erred in its decision by not addressing dual components of Judge Mireles' behavior : "([p]etitioner issued two commands to the police officers. He ordered them to bring respondent into his courtroom, and he ordered them to commit a battery. The first order was an action taken in a judicial capacity; he second clearly was not. Ordering a battery has no relation to a function normally performed by a judge. In an interval of a minute or two had separated the two orders, it would be undeniable that no immunity would attach to the latter order. The fact that both are alleged to have occurred as part of the same communication does not enlarge the judge's immunity. Accordingly, I respectfully dissent.

Justice Scalia ended with stating that he frankly was unsure whether court's disposition...was correct.

The lower court of appeals were unable to correctly distinquish whether Mireles was engaging in "a judicial act." (*Waco v. Mireles*, 934 F2d 214).

Justice Scalia and Justice Stevens did not agree with the court's opinion, using different methods of discriminating as to what was and what was not a "judicial act."

If the court of appeals cannot agree on what a "judicial act is" and two Supreme Court Justices likewise are confused, it would follow that the general populace would not be able to make a proper discrimination as to what is or what is not a judicial behavior.

The court can take unusual note of the large number of amicus briefs filed in *Burns v. Reid, infra.* Almost every Attorney General of every state hailed in support of immunity for the prosecutor. Yet, with this many amicus briefs, *from the very best minds of our country,* favoring immunity for the prosecutor, the Supreme Court declared that the prosecutor did not have immunity. It would appear one hundred experts said the prosecutor have

immunity and twelve experts said the prosecutor did not have immunity. This exemplifies the vagueness of the law. Perhaps, needfully so. Justice Scalia's detailed analysis on immunity in *Burns v. Reid*, 500 US 478, 492, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991), clearly shows his great understanding in determining immunized behaviors ("must first state the precise claim"). Justice Scalia's approach in *Burns, Id.*,_ and methodology, repeats Justice Stevens's approach in *Mireles* of breaking down the behaviors into separate parts and looking at their function.

The court's direction in *Mireles*, was an overall functional approach, whereas Justice Scalia's and Justice Steven's approach recognizes the different aspects of the behavior. Arguendo, Court's approach in *Mireles* would have seemingly covered *Mireles'* behavior if he had directed the sheriffs to bring Prosecuto Waco to court dead or alive. If sheriffs would have brought Waco to court dead, then this court would have immunized Mireles, "since directing sheriff is judicial act." *This, of course, is an absurdity.* Justice Stevens in *Mireles* indicated this confusion.

Court has indicated that as long as the basis is a judicial act, then the judge is immunized . ([I]mmunity applies even when the judge is accused of acting maliciously and corruptly." *Mireles*, at page 14, references also *Harlow v. Fitzgerald*, 457 U. S. 800, 815-819, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982) (allegations of malice are insufficient to overcome qualified immunity.

It would clearly appear that the ability to discriminate what is and what is not a "judicial act" is not a straight forward issue for the judiciary , thus indicative of the general public's inability to ascertain how to apply the law or not apply the law. This vagueness hampers and obstructs the ability of citizens to fight for justice in the courts or fight to uphold the laws, and undermines the

intent of the lawmaker and citizen. In the instant matters, Judges, U. S. Attorneys and others have all refused to address the issue of jurisdiction, a non discretionary administrative duty.

Judges are clearly immunized for "adjudicating", and Prosecutors under *Imbler v. Pachtman*, 424 U. S. 409 (1980), are clearly immune for "advocating." In the instant matters, judges are refusing to adjudicate, and prosecutors are refusing to advocate. This is obvious because the complaint's gravaman is "silence." Courts below have indicated this silence is a "judicial action."

With the current unclear guidelines on judicial immunity from the Supreme Court in the cases cited throughout (*Mireles, Forrester, Burns,* and others), and in light of the specific difficulties referenced above that the public and members of the judiciary are having in defining what a judicial act is, the Supreme Court should grant this petition for certiorari and continue to clarify the parameters for identifying immunized behaviors.

PETITIONER GRAY'S ARGUMENT

WHETHER COURT'S DETERMINATION THAT GOVERNMENT OFFICIALS MERITED ABSOLUTE IMMUNITY FOR ONGOING SILENCE TO ISSUE OF JURISDICTION WAS IN ERROR, SINCE ACT WAS REFUSAL TO PERFORM NON DISCRETIONARY, ADMINISTRATIVE DUTY.

Absolute immunity covers "judicial acts." In *Forrester v. White*, 1988) 484 US 219, 98 L. Ed. 2d 555, 108 S. Ct. 538 court opined that "judicial immunity from liability in damages is justified and defined by the function it serves, and not by the person to who it attaches." The Supreme Court stated that the mere fact that a defendant happens to be a judge does not mean he has absolute judicial immunity. *Id.* Absolute judicial immunity only applies to judicial acts and not to administrative, legislative, and executive function that judges may perform." *Id.* at 227-29, 108 S. Ct. at 544-545. Thus *Forrester*, in effect refined the analysis to first part of the *Stump* test. (*See Stump v. Sparkman*, 435 US, at 360, 55 L. Ed. 2d 331, 98 S. Ct.-1099.

Forrester, Id., also stated "that while the court has not articulated a precise and general definition of the class of acts entitled to immunity, the decided cases suggested an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that a judge might on occasion be assigned by law. . ." Likewise, since the decision in *Imbler v. Pachtman*, 424 US 409, 47 L. Ed. 2d 128, 96 s. Ct. 984 (1976), most courts of appeals have held that prosecutors are not entitled to absolute immunity for "investigative" or "administrative acts."

The gravamen of Petitioner's civil rights complaint is an "ongoing refusal to address the issue of jurisdiction" [code of silence] in violation of the Appellant's Fifth and Sixth Amendment rights.

In *Burns v. Reid*, (1991) 500 US 478, 114 L. Ed. 2d 547, 111 S. Ct. 1934, Justice Scalia stated that "initially, it is important to determine the precise claim that petition has made against respondent." The precise claim that Petitioner has repeatedly made against the Defendants and *interwoven throughout his civil rights complaint is:*

> "Refusing to address the issue of jurisdiction."

Addressing the issue of jurisdiction is a nondiscretionary duty pursuant to statutory law and the clear rulings of this court. This court has ruled that "Once jurisdiction is challenged, it must be proved." *McNutt v. GMAC* (1936) 298 80 L. Ed. 1135, 56 S. Ct. 780.

The Congress of the United States recently in H.R. 1487 mandated that the issue of jurisdiction be resolved "in the first instance." Statutory law (5 U.S.C. 554(a)(6)) has likewise directed the issue of jurisdiction to be answered. The Constitution of the United States, which each and every defendant are under statutory oath to uphold, demands the addressing of the issue of jurisdiction under both the Fifth and Sixth Amendment, and petitioner's Habeas privilege.

The Supreme Court has opined that there is a "right" to be informed of the law:

> "No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what

> the State commands or forbids." *Bouie v. Columbia*, 378 U. S. 347, 12 L. Ed. 2d 894, 84 S. Ct. 1967 citing *Lanzetta v. Jersey*, 306 U. S. 41, 453, 83 L. Ed. 888, 890, 59 S. Ct. 618. See also *McBoyle v. U. S.*, 283 U. S. 25, 75 L. Ed. 816, 51 S. Ct. 340, *U. S. v. Cardiff*, 344 U. S. 174, 176-177, 97 L. Ed. 200, 73 S. Ct. 189; *Pierce v. U. S.*, 314 U. S. 306, 311, 86 L. Ed. 226, 62 S. Ct. 237.

This court in *Steel Co. v. Citizens for Better Env.*, (1998) 140 L. Ed. 2d 210 opined that "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and thereof the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." *Great Southern Fire Proof Hotel Co. v. Jones*, 177 US at 453, 44 L. Ed. 842, 20 S. Ct. 690. The requirement that jurisdiction be established as a threshold matter "[springs] from the nature and the limits of the judicial power of the United States" and is "inflexible and without exception." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 US 379, 383, 28 L. Ed. 462, 4 S. Ct 510 (1884).

From the above it is clear that the addressing of the issue of jurisdiction is a nondiscretionary duty.

In *Westfall v. Ervin*, 484 US 292, 297-298, 98 L. Ed. 2d 619, 108 S. Ct. 580 (1988) this court opined that absolute immunity for nondiscretionary acts finds no support in the traditional justifications for official immunity. At the common law, only the discretionary functions of government officials are immune from liability. *Westfall*, at 622. In *Westfall* the court of appeals had reversed, holding that federal employees enjoy immunity only if the challenged conduct, in addition to being within the

scope of the employee's duties, is also a discretionary act. Conduct by federal officials must be discretionary in nature, as well as being within the scope of their employment, before the conduct is absolutely immunized from state law tort liability. See *Doe v. McMillan*, 412 U. S. 306, 36 L. Ed. 2d 912, 93 S. Ct. 2018. The district court erred in failing to consider whether the challenged conduct was discretionary, in addition to being within the scope of petitioner's duties, before finding that petitioners were absolutely immune from suit. Because it would not further effective governance, absolute immunity for non discretionary functions finds no support in the traditional justification for official immunity. *Id.* If the precise claim is not mandated by law . . . Judges, like executive officers with discretionary functions, have been held absolutely immune regardless of their motive or good faith. *Barr v. Matteo*, 360 U. S. 546 (1959), *Pierson v. Ray*, 386 U. S. 547. Government employee enjoys immunity only if challenged conduct is discretionary act and is within outer perimeter of actor's line of duty. *John v. Pettibone Corp.*, 769 F. 2d 724 (1985)

Doctrine of Absolute Immunity applies to judicial acts, but not to ministerial or administrative acts. *Stump v. Sparkman*, U. S., 435 U. S. at 360, 98 S. Ct. at 1106, *Ex Parte Virginia*, 10 Otto at 339, 348, 25 L. Ed. 676 (1879). For example, acts involving non judicial functions may nonetheless be protected by legislative and prosecutorial immunity, or "qualified" immunity, and, if acts of judges involved both judicial and non judicial conduct, the unprotected behavior must be separated from the shielded behavior such that judges may be held liable for their non-judicial acts. *Moore v. Taylor*, (LA App 2d Cir.) 541 So. 2d 378.

46 Am Jur 2d "Judges" Sec. 68 at page 186: "Judges may be exposed to liability for non-judicial acts; since they generally have no judicial immunity for their administrative, legislative or executive functions. In this regard, it has been said that judges acting in an administrative capacity do not have absolute immunity from suits for damages; administrative decisions, even though essential to the functioning of the court have not been regarded as judicial acts."

Courts have considered the following facts in determining whether an act is judicial: (1) whether the act of decision involved the exercise of discretion or judgment, or is rather a ministerial act which might as well have been committed to a private person as to a judge. *Ex Parte Virginia*, 100 U. S. at 238 .

The Supreme Court stated in *Antoine v. Byers & Anderson, supra,* "When judicial immunity is extended to officials other than judges, the extension is because such official's duties are functionally comparative to that of judge, that is, because the officials, too, exercise a discretionary judgment as part of the official's function. [B]ecause their job requires no discretionary judgment, court reporter's are not entitled to immunity as part of the judicial function." *Id.*

At common law, on which all immunity is based, *Forrester, supra,* and *Doe v. McMillan*, 412 U. S. 306, 93 S. Ct. 2018, 36 L. Ed. 2d 912 (1973), nondiscretionary activity is not given immunity.

Judges are immune if they are involved in a judicial function. *Mireles, supra,* "As is evident from the foregoing catalog, judicial immunity extended not only to public officials, but also to private citizens (in particular jurors

and arbitrators); the touchstone for its applicability was performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Burns v. Reed*, supra, (Scalia, J,. concurring in judgment in part and dissenting in part). The touchstone of judicial immunity revolves around the issue of adjudicating. *Antoine, supra.* Defendant's ongoing refusal to adjudicate is not a judicial function. The law, and rulings of the Supreme Court have made the addressing of the issue of jurisdiction a mandatory duty. Where there is a duty there is a right. The due process right to know the law traces to King John at Runnymede in 1215. "That makes a man an offender for a word." Isaiah 29:20-21 [KING JAMES VERSION]

This further comports with the requirements of the Federal Constitution at Amendments Five and Six (Due Process, Right to know the Nature of Accusation). Refusing to address the issue of jurisdiction would appear to be prima facie evidence of the violation of the petitioner's rights.

Refusing to address the issue of jurisdiction is failure to perform an administrative duty and the immunity afforded is *at most qualified immunity.* "Indeed we have recently held that judges are not entitled to absolute immunity when acting in their administrative capacity." *Forrester, supra.*

It must be remembered that immunity is for the benefit of the public, not corrupt judges. *Pulliam*, 466 U. S. at 532, 104 S. Ct. at 1976. The doctrine of judicial immunity was designed to protect discretionary decision making.

"When a government official goes completely outside the scope of his discretionary authority, he ceases to acts as a government official and instead acts on his own behalf." *Harlow v. Fitzgerald*, 457 U. S. at 814, 102 S. Ct. at 2736.

Granting immunity for failing to perform a duty, in the specific instance the precise claim being "refusing to address the issue of jurisdiction," perverts the judicial process, invites tyranny, and allows the court to be used as an instrument of oppression. Immunity for refusing to address jurisdiction, a mandatory duty, negatively reinforces the wrong behavior in a judge, shielding the judge from learning from the consequences of his behavior while simultaneously perverting the judicial process.

This court has repeatedly made the addressing of the issue of jurisdiction nondiscretionary. This would point to the fact that refusing to address the issue of jurisdiction, is not a judicial act but an administrative ministerial act, for which there is no immunity.

Court erred in its determination that the judges involved had absolute immunity; the most immunity afforded for refusing to answer the question of jurisdiction, a nondiscretionary duty, would be qualified immunity, if any.

This argument has analyzed the precise claim in light of judicial immunity. Defendants in an ongoing pattern have refused to address the issue of jurisdiction. "Silence can be equated with fraud when there is a legal or moral duty to speak." *U. S. V. Tweel*, 550 F. 2d 297, 299 (Fifth Cir.1977).

It is not a judicial function to perpetrate a fraud from the bench, *Yates v. Village of Hoffman Estates, Ill*, 209 F. Supp. 757 (1962), nor to commit or further unlawful acts.
U. S. v. Claiborne, 772 F. 2d 842 (1984

CONCLUSION

The petition for a writ of certiorari should be granted.

January 31, 2001

Respectfully Submitted,

The United States of America,
Ex Rel Charles Ronald., Gray
c/o 897 Edgewood Ave. N. E.
Atlanta, Georgia [30307]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARLES RONALD., GRAY	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION FILE
v.	:	
	:	No. 1:98-CV02610 WCH
TED STEWART, et al.,	:	FILED OCT 29, 1998
	:	
Defendants.	:	
	:	

ORDER

Before the Court is plaintiff's motion to stay these proceedings indefinitely [5]. Also before the Court is a motion by federal defendants to extend the time in which to file an answer [6] and a motion by defendant Frank Eldridge to dismiss.[3]. On June 14, 1994, plaintiff Charles Ronald Gray was convicted of violating federal law. Pursuant to this conviction, Gray was sentenced to thirty-three months incarceration followed by three years supervised release. After being released from prison, Gray filed the instant action alleging numerous constitutional violations and conspiracy claims against defendants. Defendants are: three United States District Court Judges; one United States Magistrate Judge; one State of Georgia Court of Appeals Judge; three United States Probation Officers; including the chief for this district; three Assistant United States Attorneys; and one IRS agent.

Gray seeks an indefinite stay of the instant proceedings. In managing its own docket, a court has broad discretion to order a stay of proceedings. Clinton v. Jones, 520 U. S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997). As grounds for his
request, Gray alleges the following: (1) that he was unlawfully imprisoned, (2) that he lacks adequate access to legal resources, (3) that he lacks access to writing implements, (4) that he has been deprived of medical treatment, (5) that his eyeglasses have been stolen, (6) that he was not afforded proper grievance procedures, and (6) that his right to petition for habeas corpus has been suspended. According to Court's records, Gray's correct address is a private residence. Thus, although Gary's [sic]
reasons in support of a stay closely resemble the type of complaints seen in prisoners suits, the Court cannot conclude that he has again been incarcerated. Regardless, the Court is convinced that Gray's reasons do not support the granting of a stay; accordingly, the Court denies Gray's
motion. If the need arises, Gray can move for a extension of time regarding a particular deadline.

Federal defendants seek a sixty-day extension in which to file a dispositive motion in lieu of an answer. Because the Department of Justice has not, as of the date of defendants' motion, received defendant's requests for legal representation representation, the Court agrees that an extension is warranted. Additionally, defendant Frank Eldridge, Judge, Georgia Court of Appeals, seeks dismissal of this action. The basis for plaintiff's complaint against Judge Eldridge is that on April 10, 1995, the Judge refused to consider a habeas corpus petition filed in Superior Court of Fulton County, Georgia, in which Gray argued that the United States District Court had proceeded against him without proper [sic] jurisdiction. Judge Eldridge argues that Gray's claim

is time barred and, alternatively, that he is immune from prosecution. To bring a claim against a state officer alleging violations of federal rights, a plaintiff must proceed under 42 U. S. C. section 1983, the enabling statute creating the cause of action. The United States Supreme Court has held that in 4 2 U. S. C. section 1983 suits, the statute of limitations is dictated by the time frame in state law personal injury actions. See Wilson v. Garcia, 471 U. S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985). Under Georgia law, a personal injury action must be brought within "two [sic] after the right of action accrues." O.C.G.A. section 9-3-33. Thus, in this case, Gray's suit must be filed before April 10, 1997. Because the instant suit was not filed until September 8, 1998, the action is time barred as to defendant Eldridge. Because the Court agrees that the applicable statute of limitations has run, the Court need not address the issues of judicial immunity.

In conclusion, the Court DENIES plaintiff's motion for an indefinite stay [5], GRANTS federal plaintiff's motion for an extension of time in which to file an answer [6], and GRANTS plaintiff Eldridge's motion to dismiss [3]. Federal defendants are HEREBY ORDERED to file an answer on or before November 10, 1998. The Clerk of the Court is HEREBY ORDRED to dismiss this action against defendant Eldridge.

It is so ORDERED this 29th day of October, 1998 .

_____

Willis B. Hunt, Jr.
Judge, United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHARLES RONALD GRAY

Plaintiff,

CIVIL ACTION FILE
v.

No. 1:98-CV-2610-WBH

TED STEWART, RICHARD LANGWAY,

JOHN DOUGHERTY, HORACE WARD,
CLARENCE COOPER, NINA HUNT,
FRANK ELDRIDGE, LORI BERANAK,
DAN CRAVEN, JOE BARTON,
JERRY WILLIFORD, AND
THOMAS THRASH,

Defendants.

ORDER
(Decided July 23, 1999)

Before the Court are defendants' motion to dismiss [17] and plaintiff's motion for the Court's reconsideration of the order granting dismissal of defendant Frank Eldredge [10]. Before addressing the remaining defendant's motion to dismiss, the Court first notes that it denies plaintiff's motion for reconsideration. Gray brought the instant action

alleging constitutional and other violations and seeking monetary and equitable relief.

A brief recitation of factual background is needed to understand how three federal district judges, a federal magistrate judge, three assistant United States attorneys ("AUSA"), an Internal Revenue Services agent, and three high-ranking United States probation officers came to be sued. In 1992, the IRS began to administratively collect plaintiff Charles Ronald Gray's back taxes through levy and distraint procedures, including seizing Gray's personal and real property. In response, Gray filed notices of common law liens against the federal officers, including judges, involved in the tax collection. For example, he filed liens against AUSA Sharon Stokes, who brought before a magistrate judge a writ for entry onto Gray's property; IRS Agent Theresa Ann Perrine, the agent authorized under the writ to enter the property; and Judge Feldman, who signed the writ. On June 19, 1992 Gray filed a suit in Superior Court of Fulton County, Georgia, naming, among others, the United States in which he alleged theft by conversion, armed robbery, and transfer of stolen goods regarding the property seizure. After removal, Judge Shoob dismissed the named individual defendants. Gray then noticed a lien against Judge Shoob and the AUSA assigned to the case. Judge Shoob then recused, as did Judge Hall, to whom the case was subsequently assigned. Finally, the suit rested before Judge O'Kelley, who dissolved and expunged the notices of lien from the public record, including the lien Gray filed on the judge's property the morning of the hearing.

On April 20, 1993, Gray was indicted on six counts of obstruction of justice and obstruction of due administration of the Internal Revenue laws. The case was first assigned to Judge Ward and then later Judge Thrash. A jury convicted Gray on all counts. After his

conviction was upheld, Gray filed two unsuccessful habeas corpus petitions. Defendant Lori Beranek, in her capacity as AUSA, responded to the first petition, which had been filed under 28 U. S. C. 2241. Magistrate Judge Dougherty recommended dismissal of the petition because Section 2241, the vehicle challenging unlawful state custody, is not a substitute for a motion under 28 U. S. C. Section 2255, the latter being the proper vehicle for Gray to bring his unlawful federal custody claim. Judge Cooper then adopted the Magistrate Judge's recommendation and dismissed the petition. In his second Section 2241 petition, Gray claimed that defendants Dan Craven and the United States District court were illegally detaining him. Magistrate Judge Dougherty ordered the case administratively closed because Gray had a motion to vacate pending in the underlying criminal case. In short, the defendants were all involved, one way or another, with Gray's judicial proceedings.[2]

Gray brings a variety of claims against defendants, as summarized below.[3]

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[2] The remaining named defendants not discussed in the facts recite above were sued because they had supervisory roles over the main actor or were tangentially involved. For example, defendants Joe Barton and Jerry T. Williford supervised Officer Craven.

[3] Defendants Williford and Eldridge are omitted from the list. Plaintiff failed to serve Williford and makes no argument countering defendants contention that such a failure necessitates dismissal. Accordingly, the Court dismisses defendant Williford. And the Court earlier dismissed defendant Eldridge.

Defendant	Challenged Conduct
Langway	conducting grand jury investigation without jurisdiction,[4] failing to advise plaintiff of nature of charges; subornation of perjury; lack of jurisdiction; failure to address habeas petition and to assert defense of court's lack of jurisdiction to address petition; conspiracy to violate Gray's Eight Amendment rights by using psychological terror; enticing Gray into slavery; preventing Gray from bringing a *qui tam* suit; extortion; neglect; failure to respond to challenge of district court's jurisdiction; conspiracy to violate Gray's due process property rights; refusing to respond to discovery; revoking supervised release; upwardly departing from Sentencing Guidelines; threatening to bring obstruction of justice charges;

[4] Gray appears to term an alleged lack of jurisdiction as "perjury of due process."

forcing Gray to provide urine sample;
concealing fact during revocation hearing that Gray had no duty to submit IRS "1040" form;
engineering theft of Gray's glasses;
incarcerating Gray to prevent him from preparing proper defense;
suppression of evidence;
failure to follow court rules;
overthrowing United States Constitution;
moving to revoke release in retaliation for filing articles of impeachment;
conspiracy to violate Gray's due process; and
conspiracy to prevent Gray from reporting his earnings in "Constitutional Coin."

Stewart

conducting grand jury investigation without jurisdiction;
failing to advise plaintiff of nature o charges;
subornation of perjury;
lack of jurisdiction;
conspiracy to obstruct justice, tamper with witness, and retaliate against witness
conspiracy to violate Gray's Eighth Amendment rights by using psychological terror;
enticing Gray into slavery;
preventing Gray from bringing a *qui tam* suit;
extortion;

	neglect; failure to respond to challenge of district court's jurisdiction; and conspiracy to violate Gray's due process property rights.
Dougherty	lack of jurisdiction; recommending suspension of Gray's habeas petition; conspiracy to violate Gray's Eighth Amendment rights by using psychological terror; enticing Gray into slavery; preventing Gray from bringing a *qui tam* suit; extortion; neglect; failure to respond to challenge of district court's jurisdiction; conspiracy to violate Gray's due process property rights; failure to advise of nature of charges; revoking supervised release; allowing government's attorney to control the courtroom; relieving Langway of the need to answer pleadings. allowing one AUSA to represent all defendants; allowing Craven and Langway to prepare finding of fact and conclusions of law; referring to Craven and Langways as officers of the court; and conspiracy to prevent Gray from

	reporting his earning in "Constitutional Coin.
Ward	lack of jurisdiction; violating Gray's due process rights; failure to advise Gray of charges; suspending Gray's habeas petition; conspiracy to violate Gray's Eighth Amendment rights by using psychological terror; enticing Gray into slavery; preventing Gray from bringing a *qui tam* suit; extortion; neglect; failure to respond to challenge of district court's jurisdiction; conspiracy to violate Gray's due process property rights; permitting Langway to determine admissibility of plaintiff's chief witness; and conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."
Beranek	fraudulently answering Gray's habeas petition; failing to respond to jurisdictional challenge; neglect; conspiracy to violate Gray's Eighth Amendment rights by using psychological terror; enticing Gray into slavery; preventing Gray from bringing a

	qui tam suit; extortion; neglect; failure to respond to challenge of district court's jurisdiction; conspiracy to violate Gray's due process property rights; and conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."
Cooper	adopting Judge Dougherty's Report and Recommendation; conspiracy to violate Gray's Eighth Amendment rights by using psychological terror; enticing Gray into slavery; extortion; neglect; failure to respond to challenge of district court's jurisdiction; conspiracy to violate Gray's due process property rights; and conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."
Craven	failure to report criminal activity; extortion; forcing Gray to submit to psychological tests; forcing Gray to submit urine sample; failure to respond to Affidavit; perjury; failure to advise plaintiff of charges; conspiracy to violate Gray's Eighth

	Amendment rights by using psychological terror; **enticing Gray into slavery;** **preventing Gray from bringing a *qui tam* suit;** **extortion;** **neglect;** **failure to respond to challenge of district court's jurisdiction;** **conspiracy to violate Gray's due process property rights;** **refusing to respond to discovery;** **engineering theft of plaintiff's glasses,** **incarcerating Gray to prevent him from mounting a defense,** **overthrowing the United States Constitution;** **conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."**
Barton	**conspiracy;** **obstruction of justice;** **witness tampering;** **violation of Gray's Fourth Amendment rights;** **failure to discipline Craven's illegal acts;** **conspiracy to violate Gray's due process property rights; and** **conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."**
Thrash	**lack of jurisdiction;** **failure to advise of charges;**

conspiracy to violate Gray's Eighth Amendment rights by using psychological terror;
enticing Gray into slavery;
preventing Gray from bringing a *qui tam* suit;
extortion;
neglect;
failure to respond to challenge of district court's jurisdiction;
conspiracy to violate Gray's due process property rights;
engineering theft of plaintiff's glasses;
incarcerating Gray to prevent him from mounting a defense;
overthrowing the Constitution of the United States;
not requiring defendants to follow court rules;
not granting jury trial;
holding revocation hearing;
allowing AUSA to control courtroom;
permitting AUSA to not answer Gray's pleading;
allowing one AUSA to represent all defendants;
referring to Langway and Craven as court officers; and
conspiracy to prevent Gray from reporting his earning in "Constitutional Coin."

Because Gray is proceeding *pro se,* the Court must construe his complaint liberally. See Duncan v.

Duckworth, 644 F.2d 653, 655 (7th Cir. 1981) (noting "well-established requirement that pro se pleadings be held to less stringent standards than those prepared by counsel") Haines v. Kerner, 404 U. S. 519, 520-21, 92 S. Ct. 594, 595-96, 30 L. Ed.2d 652 (1972)(less stringent standards for prose complaint). Nonetheless, the complaint is plainly without merit. Those claims that do state a cognizable cause of action consist nothing more than Gray's raising bare causes of action, without any factual support whatsoever. Further, more of Gray's claims stem from either a defendant's lack of jurisdiction or from failure to reveal another defendant's lack of jurisdiction. However, when Gray speaks of lack of jurisdiction, he is referring to the fact that each defendant is an "unregistered agent of the International Monetary Fund," and not a federal officer. These charges amount to fraud claims, which pursuant to Federal Rule of Civil Procedure 9, must be plead with specificity. Gray fails to do this. Other claims, such as failure to permit plaintiff to report his earning to the IRS in "constitutional coin" do not even state a cognizable cause of action. Finally, all of the judge's conduct is clearly protected from suits for monetary damages by absolute judicial immunity, which shields a judicial officer in all circumstances, except where the challenged conduct was not judicial in nature or where the judge acted in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U. S. 349, 357 (1978); see also Mireles v. Waco, 502 U. S. 9, 11-12 (1991) (per curiam). Accordingly, the Court dismisses with prejudice plaintiff's case.

In sum, plaintiff's motion for reconsideration is DENIED [10] and defendant's motion to dismiss is GRANTED. The Clerk of the Court is hereby directed to DISMISS this case.

It is so ORDERED this 23 day of July, 1999.

/s/ Willis B. Hunt, Jr.
Judge, United States
District Court.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-13834
Non-Argument Calendar

D.C. DOCKET No. 98-02610-CV-WBH-1

CHARLES RONALD GRAY,

Plaintiff-Appellant,

versus

TED STEWART,
RICHARD LANGWAY, et al.,

Defendant-Appellees.

Appeal from the United States District Court for the
Northern District of Georgia

(August 3, 2000)

Before BIRCH, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

Charles Ronald., Gray appeals pro se the dismissal pursuant to Fed.R.Civ.P. 12(b)(6), of his civil rights action under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U. S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), for failure to state a claim.

On appeal, Gray argues that the district court erred by not granting his request for a default judgment when the defendants failed to answer his complaint in a timely manner. He also argues that the district court erred by findng that certain defendants were immune from his law suit. Finally, he argues that the district court erred by finding that his complaint did not state a Bivens claim.

We review a district court's entry of a default judgment for abuse of discretion. See Wahl v. McIver, 773 F.2d 1169, 1174 (11th Cir. 1985). The legal determination of whether a defendant has absolute immunity to a law suit is a question of law that this Court reviews de novo. See Ellis v. Coffee County Bd. of Registrars, 981 F.2d 1185, 1189 (11th Cir. 1993). We also review the dismissal of a complaint under Fed.R.Civ.P. 12(b)(6) de novo, accepting all allegations in the complaint as true and construing those allegations in the light most favorable to the plaintiff. Roberts v. Florida Power & Light Co., 146 F.3d 1305, 1307 (11th Cir. 1998), cert.denied, 119 S. Ct. 1027 (1999).

Upon review of all pleadings, motions, and the district court's rulings in the record, and upon consideration of the briefs of the parties, we find no reversible error.

Because the district court has available to it a wide range of lesser sanctions, entry of judgment of default is a drastic remedy which should be used only in extreme situations. Wahl, 773 F.2d at 1174. As Gray does not

contend that he was prejudiced in any way, the defendants' request for additional time to file an answer did not present an extreme situation warranting default judgment as a sanction. Accordingly, we find that the district court did not abuse its discretion by refusing to grant Gray's motion for default judgment.

Judges are protected by absolute immunity from a suit if the challenged actions are judicial in nature and if they are not completed in the absence of jurisdiction. Mireles v. Waco, 502 U. S. 9, 9-12, 112 S. Ct. 286, 287-88, 116 L. Ed. 2d 9 (1991). Because the challenged conduct of the district court judges and magistrate judge sued in this action were judicial in nature and within their jurisdiction to act, the district court properly concluded that these defendants were entitled to absolute immunity from suit.

Liberally construing Gray's complaint and brief on appeal, Gray seems to be challenging his conviction for obstruction of justice and interference with the Internal Revenue Serivce by filing suit against all the judges, U.S.Attorneys, IRS Agent witnesses, and probation officers involved in the prosecution. To the extent that Gray request injunctive or declaratory relief, these claims are not cognizable in a Bivens action. See, Abella v. Rubino, 63 F.3d 1063, 1066 (11th Cir. 1995)(stating that claims that challenge the validity of a plaintiff's conviction are not cognizable under section 1983 or Bivens.) Accordingly, we affirm the district court's dismissal of Gray's Bivens action.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-13834-11

CHARLES RONALD GRAY,

Plaintiff –Appellant,

versus

TED STEWART,
RICHARD LANGWAY,
JOHN DOUGHTERY,
HORACE D. WARD,
CLARENCE COOPER, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Filed November 06, 2000)

(Opinion _____, 11th Cir., 19__, _____F. 2d_____).

Before: BIRCH, CARNES and BARKETT, Circuit Judges.

Per Curiam:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
/S/ ROSEMARY BARKETT
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)